

In the Matter of License No. 29234

Issued to: JOHN C. WENZEL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOHN C. WENZEL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 17 June, 1952, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended License No. 29234 issued to John C. Wenzel upon finding him guilty of inattention to duty based upon two specifications alleging in substance that while serving as Master on board the American SS SEATRIN TEXAS under authority of the document above described, on or about 29 May, 1951, while said vessel was at sea, he did:

"Second Specification: . . . negligently fail to assign adequate protective guard over the person of a shackled irrational seaman, one Willard F. Parks, as a consequence of which said seaman inflicted serious injury on himself.

"Third Specification: . . . negligently permit the use of the ship's hospital space to be used as living quarters."

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. The hearing commenced at New York City on 27 November, 1951, but it was transferred to New Orleans on motion by counsel for Appellant and the hearing was reconvened at New Orleans on 18 December, 1951, upon Appellant's request. He was represented by an attorney of his own choice and a plea of "not guilty" was entered to the charge and each specification.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence numerous sworn interrogatories and statements pursuant to stipulation that these seamen would have given testimony of the same nature if they had testified at the hearing. Entries in the Deck Log Book and pictures of the ship were also received in evidence.

After the Examiner denied counsel's motion to dismiss on the ground that a prima facie case had not been established, he offered in evidence a copy of the Clinical Record of Parks while he was a patient at the USPHS Hospital at Norfolk, Virginia, from 30 May, 1951, to 12 July, 1951, and the expert opinion of C. S. Holbrook,

Professor of Clinical Psychiatry at Tulane University, in the form of a letter which was based upon a review of some of the evidence presented. Although Appellant's testimony at the Preliminary Investigation and statements by him were included in the stipulated evidence, he submitted to cross-examination at the hearing and was questioned briefly.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the above two specifications. The First Specification was found not proved. The Examiner then entered the order suspending Appellant's License No. 29234 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of one month.

From that order, this appeal has been taken, and it is urged that the findings of the Examiner are not warranted by the evidence adduced at the hearing. Appellant contends that the allegations contained in the Second Specification were not proved because he did not act "negligently", Parks was not "irrational", and his injuries were not "serious." It is claimed the evidence shows that: Parks was perfectly rational and composed, and he indicated no intent to harm himself prior to obtaining a glass and cutting his wrists without warning; the letter from the psychiatrist, Dr. C. S. Holbrook, supports the belief that Appellant exercised reasonable care and judgment under the circumstances (citing three court decisions) and the test of negligence depends upon the conditions as they were at the time rather than judging the resulting damage with the hindsight of a "Monday morning quarterback"; and the primary treatment given to Parks at the USPHS Hospital was for his alcoholic condition. Concerning the Third Specification, Appellant contends that he designated a convenient cabin near the bridge to be used as the hospital area because it was more suitably located than the hospital spaces in the after quarters of the vessel; and also that a technical violation of the provisions of 46 U.S.C. 660-1 was not proved because there was no evidence that the ship carried a "crew of twelve or more seamen" and ordinarily made "voyages of more than three days' duration between ports," both of which conditions are necessary before the provisions of the above statute with respect to hospital spaces becomes mandatory.

APPEARANCES: Messrs. Chaffe, McCall, Toler and Phillips, of New Orleans by
Edmund McIlhenny, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a voyage including the dates of 25 May to 29 May, 1951, Appellant was serving as Master on board the American SS SEATRAN TEXAS and acting under authority of his License No. 29234.

On 25 May, 1951, Willard F. Parks reported on board the SEATRAN TEXAS at Texas City, Texas, and the ship departed for Edgewater, New Jersey, on the same day. Parks had been

drinking alcoholic beverages to an excessive extent for about a week or ten days prior to departure.

While Parks was standing watch as helmsman at about 2100 on 26 May, 1951, Appellant noticed that Parks was talking to himself and repeating over and over in an increasingly loud voice, "here comes the revolution." Appellant told Parks to keep quiet and pay attention to his job but he continued talking to himself until Appellant had him relieved. Parks went to his quarters and spent a restless night. He awakened his roommate, Fred Bibber, early the following morning while talking about two men whom he imagined were coming after him. This was a rainy day and Parks was not required to turn to. He wandered around the ship and slept intermittently for short periods of time. He did not stand watch on the twenty-seventh or twenty-eighth.

At about 0200 on 28 May, Parks awakened Bibber and asked him for protection against the men who were going to kill Parks. Bibber called Appellant, told him what had happened, and asked him for the handcuffs to put on Parks. Appellant refused to have Parks handcuffed because he was not violent but Appellant gave Bibber some aromatic spirits of ammonia which caused Parks to quiet down and finally fall asleep. Later in the day, Appellant observed Parks while he was painting and he seemed to be all right. But in the evening of this day, Parks again had hallucinations that someone was after him and attempting to kill him. The latter incident was not reported to Appellant.

At about 0700 on 29 May, 1951, Parks cut the line securing a life ring and jumped overboard with it. The general alarm was sounded and Appellant maneuvered the ship to a position where Parks could climb up the Jacob's ladder. He was then given a shower and clean clothes before being handcuffed, under protest, and shackled to the spare anchor which was on deck about twenty feet forward of the bridge. Although there was no one assigned to the specific duty of standing guard over Parks, the officer on watch and other personnel on the bridge could keep Parks under their observation. Canvas was spread on the deck and a blanket was made available for Parks' comfort. The handcuffs were taken off when the Chief Mate took breakfast to Parks. Since he was quiet after eating breakfast, Appellant said it was not necessary to put on the handcuffs again since Parks could be watched from the bridge. Appellant considered this to be a safer and more satisfactory arrangement than putting Parks in the hospital quarters which were back aft and temporarily occupied by two members of the crew as their living quarters.

Shortly after 1000, Appellant talked with Parks for about ten minutes. Parks was not violent nor perfectly rational in his conversation at this time. Appellant then retired to his cabin. At about 1100 Parks obtained a drinking glass by some means not disclosed in the record, broke the glass, and severely slashed both of his wrists with the broken edges before he was subdued by various members of the crew. After first aid was administered, Parks was given a dose of phenobarbital and placed in a deck chair with Bibber watching over him.

Appellant requested medical assistance from the Coast Guard and Parks was transferred to a Coast Guard cutter off Wilmington, North Carolina, at approximately 1930 the same evening. Parks was treated at Southport, North Carolina, before being flown to the USPHS Hospital at Norfolk, Virginia, the following day where he was treated for laceration of wrists and acute

psychosis due to alcohol until discharged on 12 July, 1951.

Appellant has been going to sea for forty years and has been licensed as a Master for more than thirty years. The only prior disciplinary action having been taken against his license was a thirty-day suspension for grounding a vessel in 1934.

OPINION

I agree with the Examiner's opinion that Appellant was negligent when he did not provide for having Parks closely guarded after he had jumped overboard and that Parks ability to obtain a glass without detection from the bridge is clear evidence of the lack of an adequate protective guard over Parks. The fact that the record does not disclose how Parks came into possession of the glass indicates that he was not even under continuous observation from the distance of the bridge.

The evidence shows that Parks was suffering from delirium tremens as the result of his heavy drinking prior to departing from Texas City. According to Appellant's own testimony, he suspected the source of the trouble at the time when Parks was relieved of his watch on the twenty-sixth. On the basis of this and subsequent conduct of Parks which was known to Appellant, he received sufficient warning to put him on notice that Parks should be treated in the manner prescribed for those suffering from delirium tremens. It has been held that a person in such condition must be guarded until he regains "mental composure and the ability to care for himself." Reck v. Pacific-Atlantic S.S. Co. (C.C.A. 2, 1950), 180 F.2d 866. In that case, a member of the crew obtained a judgment based upon alleged negligence, for injuries received while he was suffering from the results of previous alcoholic intoxication. Another seaman had been assigned the specific duty to stay in Reck's room with him and to prevent Reck from harming himself. At a time when Reck appeared to be sleeping, the guard left the room for about five minutes to go to a lavatory fifteen feet away from the room. When the guard returned, Reck had disappeared and he was found where he had fallen into the number one hold in order to prevent imaginary attackers from injuring him. Hence, although Reck was closely and continuously guarded until the guard left the room for a few minutes at a time when Reck seemed perfectly calm, the claim of negligence was upheld. The three cases cited by Appellant present situations which are of a different nature since they pertain to the adequacy of treatment on the ship after seamen had received physical injuries and there were no indications as to the actual seriousness of the injuries.

The reasoning of the court in the above case is supported by "The Ship's Medicine Chest and First Aid at Sea" (1929) which is a publication compiled by medical officers of the USPHS for use on ships having no physician, and to teach officers and crews of American merchant vessels how to meet the accidents of disease and injury. Under the heading of "Delirium Tremens," this handbook states that "A patient suffering from this disease must be carefully guarded as he is temporarily insane and, hence, not responsible for his actions and may harm himself or others."

Relying upon the above authorities, it is my opinion that Appellant did not exercise reasonable care and judgment when he failed to place Parks continuously under the observation of a specific and nearby guard. The fact that Parks was not violent and was outwardly calm after being

shackled to the anchor did not relieve Appellant from this responsibility. At times, Parks had appeared to be rational before jumping overboard but the latter act highly discredited any such appearances. Before Parks left the ship on the morning of the twenty-ninth, Appellant might have been reasonably justified in believing that Parks had practically recuperated from his illness; but there should have been no doubt as to his "irrational" condition for considerably more than four hours after he had jumped overboard. Consequently, Appellant acted "negligently" and there is ample evidence that the resultant injuries which Parks inflicted upon himself were of a "serious" nature.

It is also my opinion that the far less serious offense alleged in the Third Specification was proven. The number of the members of the crew from whom statements were taken and submitted in evidence is, in itself, sufficient evidence that the crew exceeded twelve seamen; and the nature of the voyage in question is satisfactory proof that the ship usually made voyages of more than three days' duration between ports.

ORDER

The Order of the Examiner dated at New Orleans, Louisiana, on 17 June, 1953, is ~~REVERSED~~ **AFFIRMED**.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 26th day of February, 1953.